

IN THE STATE COURT OF CLAYTON COUNTY  
STATE OF GEORGIA

|                                    |   |                  |
|------------------------------------|---|------------------|
| WINFORD HARTRY and                 | ) |                  |
| GERALDINE HARTRY,                  | ) |                  |
|                                    | ) | CIVIL ACTION NO. |
| Plaintiffs,                        | ) |                  |
|                                    | ) | 2010CV06254-D    |
| V.                                 | ) |                  |
|                                    | ) |                  |
| RON JOHNSON, JR ENTERPRISES, INC.) | ) |                  |
| COLUMBIA NATIONAL INSURANCE )      | ) |                  |
| COMPANY and NORFOLK SOUTHERN )     | ) |                  |
| RAILWAY COMPANY,                   | ) |                  |
|                                    | ) |                  |
| Defendants.                        | ) |                  |

ORDER ON PLAINTIFF'S MOTION TO COMPEL DISCOVERY  
FROM DEFENDANT NORFOLK SOUTHERN RAILWAY, ON NORFOLK  
SOUTHERN RAILWAY COMPANY'S MOTION FOR PROTECTIVE ORDER, AND  
ON SCIENCE APPLICATIONS INTERNATIONAL CORPORATION, INC'S  
MOTION TO INTERVENE

The above-referenced Motions having been read and considered, the Court  
having considered all responses and reply briefs in regard thereto, and having heard oral  
argument on same, the following Order is entered:

Science Applications International Corporation, Inc.'s Motion to Intervene was  
allowed, for the purpose of the Motion to Compel and Motion for Protective Order only,  
and Science Applications International Corporation, Inc. was permitted to offer oral  
argument in support of their position with regard to the issues involved. Therefore, their  
"Motion to Intervene" was granted, for the limited purpose of argument on these motions.

The issues raised in the Motion to Compel and the Motion for Protective Order  
involve the same data, so will be addressed together in this Order.

This is a personal injury case involving negligence against Defendants which arose from a collision between a train driven by Plaintiff and a tractor-trailer tanker driven by Ron Johnson, Jr., owned by Defendant Ron Johnson Jr. Enterprises, Inc. The train was equipped with a digital video recording system, "RailView," that recorded the accident and the events immediately preceding the accident. RailView is manufactured by Science Applications International Corporation ("SAIC"). The data captured by the RailView system cannot be viewed without RailView software (although the image produced by the software can be copied as it is playing).

Defendant Norfolk Southern and SAIC have a license agreement regarding the RailView software, in which SAIC has restricted Norfolk Southern's use of the information recorded by the RailView system. SAIC has claimed copyright ownership of not only the system, including the software, but the data and images created by it.

Plaintiffs have propounded the following Request to Produce No. 37 to Defendant Norfolk Southern:

"Please produce all documents which record, reflect, or otherwise evidence, in whole or in part, the speed tapes from the locomotives (including the data table, expanded tabular format) involved in the Occurrence. This includes any on-board camera, train-cam, etc."

Defendant Norfolk Southern has agreed to provide the data, but only in a form that would require Plaintiffs to purchase a software license with SAIC at the cost of \$500 per year, or by allowing Plaintiff's counsel to view the video at their office when needed. Defendant Norfolk Southern contends that making a copy of the data in any other form violates their licensing agreement with SAIC.

The Court finds that neither of the alternatives suggested by Defendant Norfolk Southern Railway Company for Plaintiff to have access to this critical video is an appropriate way to respond to the discovery request at issue. Plaintiff's counsel may choose to purchase the software, but should not be required to do so. Plaintiff's counsel certainly should not have to make arrangements to access the information on a computer in the office of counsel for Defendant.

Therefore, it is Ordered that Defendant Norfolk Southern Railway Company produce the video and data recordings in some usable form to the Plaintiffs. Defendant Norfolk Southern Railway Company may (1) obtain permission from SAIC to produce the data in useable form to Plaintiffs, or (2) provide Plaintiffs with a computer with the pre-loaded software and relevant video and data recording to use during the litigation (the Plaintiff to return the computer to Defendant at the conclusion of the litigation), or (3) any other method the parties may agree to without Court intervention.

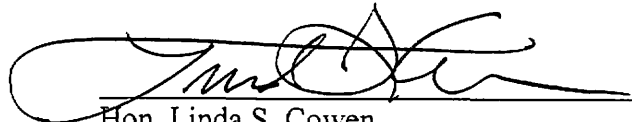
Defendant Norfolk Southern has asked for a Protective Order in regard to the video and data recordings in this matter, arguing that dissemination of the images for purposes other than for this litigation violates SAIC's copyright. SAIC (the appropriate party to move to protect their copyright), has also moved to prevent Plaintiffs from using the images for purposes other than this litigation. Plaintiffs oppose this request and argue that Defendants have failed to show good cause for limiting public access to the video and data recordings.

Plaintiffs correctly point out the strong presumption in favor of public access to judicial records, and also point out that this collision occurred in a public place. Plaintiffs

further argue that they should be able to use the video for other purposes because of the “fair use doctrine” permitted by federal copyright law. However, the Court finds that the copyright of SAIC to this data and these images does protect them from use for purposes other than preparation for and use at trial only by the parties in this litigation.

Therefore it is further Ordered that (1) to the extent that any party intends to file the RailView digital video data in support of any motion filed with the Court, the video must be filed under seal, and (2) Plaintiff is not to make copies of the images or use them for any purpose other than preparation for and use in this litigation.

So Ordered this 12<sup>th</sup> day of September, 2011.

A handwritten signature in black ink, appearing to read 'Linda S. Cowen', written over a horizontal line.

Hon. Linda S. Cowen  
Judge, State Court  
Clayton County, Georgia